

REMARKS/ARGUMENTS

The Examiner is thanked for their review of the application.

Claims 1-4 remain in this application. Claims 1-4 have been amended.

In an Office Action dated May 25, 2005, the Examiner has stated that “Applicant’s arguments with respect to 35 USC 102 rejections of claims 1-4 have been considered but are moot in view of the new ground(s) of rejection. In response to applicant’s argument that the amended claim 1 includes ‘activity-based costs’ and that the prior art of Ouimet ‘does not teach or suggest the use of activity-based costs to determine a local optimum for the preferred set of prices which maximize profit’, the examiner points out that limitation recites the aforementioned limitation only in terms of intended use (to determine a preferred set of prices for the plurality of products that will provide local optimum..’.) This intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art.”

Claim 1 has been amended to recite “generating, using the computer system and using the plurality of demand coefficients and the cost data a preferred set of prices.” As noted by Examiner, the previous recitation in the claim recited using the computer system for determining said preferred set of prices. As amended, Claim 1 recites a method of generating prices which is novel and patentably distinct from the prior art. Ouimet ‘641 does not teach or suggest a method for generating a preferred set of prices using activity-based costs to determine a local optimum for the preferred set of prices which maximize profit. Nor does Ouimet ‘641 teach or suggest a structure for generating a local optimum for a preferred set of prices using activity-based costs.

Since the cited reference Ouimet '641 does not teach nor suggest a method for generating a preferred set of prices using activity-based costs to determine a local optimum for the preferred set of prices which maximize profit, Applicants believe that independent Claim 1 is now allowable. Applicants further submit that dependent Claims 2 - 4 which depend from Claim 1 are also patentable for the same reason due to their dependence from Claim 1.

In the same Office Action the Examiner also rejected Claims 1-4 under 35 U.S.C. 101 stating that "the claimed invention is directed to non-statutory subject matter. See analysis presented below. The amended claims 1-4 recite technological art only in the preamble. As to technological arts recited in the preamble, mere recitation in the preamble (i.e., intended or field of use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble. In the present case, independent claim 1 recites 'computer-implemented' only in the preamble without indicating any method step as being performed by a computer. Therefore, the claimed method as a whole is rendered outside technological since all limitation are broadly interpreted as being manually performed."

Claim 1 has been amended to recite "the method being implemented as a plurality of program instructions in a computer system" in the preamble of the claim. Claims 1 - 4 have also been amended to recite "using the computer system" to perform each of the steps of the instant method in the body of each claim. As such, Applicants believe Claims 1 - 4 are in compliance with 35 U.S.C. 101 and are in condition for allowance.

The Examiner has also rejected Claims 2-4 under 35 U.S.C. 112, second paragraph, stating that they are "indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 2-4 recite the limitations 'the determination of the preferred set of prices'. There is insufficient antecedent basis for this limitation in the claim. Independent claim does not positively recite such limitation which carries out the determination of the preferred set of prices. As noted earlier the determination is only recited as an intended result of the 'using' step."

Claim 1 has been amended to recite “generating, using the computer system and using the plurality of demand coefficients and the cost data a preferred set of prices.” As amended, independent Claim 1 does not include a using step. Claims 2 – 4 have been amended to refer to the generation step. Reference to the determination step has been eliminated. As such, Applicants believe that Claims 1 – 4 are now in compliance with 35 U.S.C. 112 and are in condition for allowance.

The Examiner has also rejected Claims 1-4 under 35 U.S.C. 102(e) stating that they are “anticipated by Ouimet et al. (US 6,094,641) (Ouimet). As per claims 1-4 Ouimet discloses a method for determining a preferred set of prices for a plurality of products based on plurality of demand coefficients and cost data (see Figures 1 and 2 and col. 3-6). Ouimet also inherently teaches generating sales model and cost model (refer to demand models, referred to in col. 4-6 and Figures 1-12). Please note that this analysis is predicted on the foregoing analysis which demonstrates that the intended use limitations (‘to determine preferred set of prices’ and ‘that will provide a local optimum for the preferred set of prices, and wherein the local optimum for the preferred set of prices maximized profit’) of the claimed invention do not result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art.”

As noted above, Claim 1 has been amended to recite “generating, using the computer system and using the plurality of demand coefficients and the cost data a preferred set of prices.” As amended, Claim 1 recites a method of generating prices which is novel and patentably distinct from the prior art. Ouimet ‘641 does not teach or suggest a method for generating a preferred set of prices using activity-based costs to determine a local optimum for the preferred set of prices which maximize profit. Nor does Ouimet ‘641 teach or suggest a structure for generating a local optimum for a preferred set of prices using activity-based costs.

Furthermore, Claim 2 has been amended to recite “further wherein said rule parameters constrain the preferred set of prices to fall within limits conforming to business strategy.” Support for the amendment can be found in the specification on page 103, lines 5 - 8 “the preferred embodiment may model several other business rules via constraints. These include limits on group price advance or decline, brand pricing rules, size pricing rules and unit pricing rules.”

Ouimet ‘641 discloses rule-based pricing systems to contrast them with model based pricing systems (col. 1, lines 30 – 34). These rule-based systems do not optimize the decision to maximize an objective such as profit or revenue, but work instead by activating a set of pre-defined rules to generate an action. The instant business rule tool is not comparable to these rule-based systems. The business rule tool in Claim 2 consists of a mechanism by which business rules that govern strategy can be included in the optimization. These rules ensure that the preferred set of prices actually conforms to the business strategy, and this capability significantly enhances model based pricing systems by making their recommendations practical and actionable. (See specification, page 97, lines 12 – 14).

As amended, Claim 2 more clearly delineates the novel aspects of the instant business rule tool. In particular, the rule tool is used to constrain the optimized set of preferred prices to fall within acceptable limits defined by business considerations. Several business rules and their implementation within an optimization framework are described in the specification. (See pages 103 – 107). These business rules include rules that govern maximum price change, price differentials between products based on their brands or sizes, line price constraints and average or weighted average price movement restrictions. These constraints limit the sets of preferred prices that are deemed acceptable by a pricing analyst or a category manager and the optimization routines must deliver prices that conform to them. Rule based systems, on the other hand, specify a recipe for responding to specific stimuli like competitor price changes, etc. They specify rule of action rules rather than rules that define business strategy.

Hence, as amended, independent Claim 2 is allowable over Ouimet '641. Applicant further submits that Claims 3 and 4, which depend from Claim 2 are also patentable due to their dependence from Claim 2. These dependent claims are novel, non-obvious and patentable because of the additional patentable features discussed above in addition to the patentable combination of their respective parent claim, Claim 1.

Also, Claim 3 has been amended to recite "wherein said cost model determines a total cost for each product in a given demand group in a given store for a given time period by computing a cost for each selected costing activity." Similarly, Claim 4 has been amended to recite "wherein said cost model determines a total cost for each product in a given demand group in a given store for a given time period by computing a cost for each selected costing activity." Support for these amendments can be found in the specification at, for example, page 76, lines 2 – 5, "[a]ctivity-based costing module computes variable and fixed costs for products at specific store locations . . . to track costing activities at retailers' distribution centers and regional stores" (emphasis added); page 81, lines 20 – 21, "[t]o calculate the cost of a product in a demand group in a store at a time, fixed and variable cost components are computed"; and page 96, lines 5 – 19 (listing of various fixed and variable costing activities).

The present invention teaches that "financial model engine 108 should be flexible enough to provide a cost model for different procedures. These different costs may have variable cost components where the cost of an item is a function of the amount of sales of the item and fixed cost components where the cost of an item is not a function of the amount of sales of the item" (see specification, page 74, line 22 to page 75, line 3). In the preferred embodiment of the inventions, the stores may only need to supply labor costs of the stores and distribution centers, costs of capital, size of and item and number of items in a case to allow a cost modeling (see specification, page 75, lines 9 -12). This invention is advantageous because by using "these estimations, costs may be more easily calculated on a store level . . . [and] allows the maximization of profits fore each store (see specification, page 75, lines 18 -19).

The instant costing model takes information from specific products in specific stores to calculate the total cost of said product. As noted above, the costing model is configured to receive information regarding labor costs, stocking time, transportation costs and the like. This

information is used to compute the cost contribution of each costing activity associated with each product at a particular store. Costs associated with, for instance, stocking costs at a distribution center, transportation costs, receiving costs, inventory costs, labor costs, bag costs, checkout costs, and invoice related costs are computed and used to determine the total cost for a particular product (see specification, page 96, lines 5 – 19). The costing model may use data from specific stores, as well as industry data to provide standard estimates of common parameters (see specification page 75, lines 6 – 7). In this way, the instant costing model is able to incorporate all relevant costing activities in order to give a total cost of a product.

Ouimet '641 teaches the concept of "visibility which is defined as the amount by which the demand for an item is increased when a given promotion is run. Associated with each promotion is a visibility, which in general can be determined from empirical study, and a promotion cost, i.e., the amount of money spent on the promotion. By including the visibility in the demand model and also taking into account the promotional cost, the pricing and promotional decisions can be optimized together such that an optimized maximum profit can be obtained" (Col. 2, lines 3 -12).

Promotional cost as defined by Ouimet '641 refers to "the amount of money spent on the promotion". In contrast, the activity-based costing as recited in Claims 1 and 4 include all of the costing activities noted above. Therefore, promotional cost is inadequate in quantifying the true cost and therefore the true profitability. In addition, as recited by Claims 1 and 4, activity-based costing provides a flexible means of accounting for any and all costs related with a particular product. These calculations of activity-based costing go above and beyond the promotional costs as disclosed by Ouimet '641.

Hence, as amended, Claim 3 is allowable over Ouimet '641. Applicant further submits that Claim 4, which depends from Claim 3 is also patentable due to its dependence from its patentable parent Claims. Furthermore, Claim 4 is also novel, non-obvious and patentable because of the additional patentable features recited in addition to the patentable combination of their respective parent claims.

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In sum, base claim 1 has been amended and is now believed to be allowable. Dependent claims 2 – 4, which depend therefrom, have also been amended and are also believed to be allowable as being dependent from their patentable parent claim 1 for at least the same reasons. Hence, Examiner's rejection of dependent Claims 2 - 4 are rendered moot in view of the amendment to independent Claim 1. No new claims have been added. Applicants believe that all pending claims 1 - 4 are now allowable over the cited art and are also in allowable form and respectfully request a Notice of Allowance for this application from the Examiner. The commissioner is authorized to charge any fees that may be necessary to facilitate the filing of this Preliminary Amendment to our Deposit Account No. 50-2766 (Order No. DEM1P005). Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at telephone number 925-570-8198.

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Respectfully submitted,



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